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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,134	11/20/2003	Ron A. Balczewski	279.303US2	9093
21186	7590	12/10/2007		
SCHWEGMAN, LUNDBERG & WOESSNER, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402			EXAMINER MANUEL, GEORGE C	
			ART UNIT	PAPER NUMBER
			3762	
			MAIL DATE	DELIVERY MODE
			12/10/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply; if any, is set in the attached communication.

## Office Action Summary

Application No.

10/718,134

Applicant(s)

BALCZEWSKI ET AL.

Examiner

George Manuel

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 and 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishikawa et al (US 6,254,548).

Ishikawa et al discloses an implantable housing comprising layer 49 with the temperature sensor 25 within the housing.

Ishikawa et al teach:

While a disclosed embodiment of transponder 15 operates in an analog mode, those skilled in the art will recognize that a transponder can operate in a digital mode. In a digital mode, the voltage produced by the temperature sensor would be sampled periodically by an A/D converter. The sampled digital values would then be modulated onto an RF carrier.

Regarding claim 2, Ishikawa et al teach a proportional-to absolute-temperature current source to generate a temperature signal. See col.13, lines 21-40.

Regarding claim 3, the first and second oscillators, and counter provide an equivalent arrangement for developing the current to obtain the temperature as the transistor structure disclosed in Ishikawa et al. Therefore, one of ordinary skill in the art would have found it obvious to substitute the oscillators and counter for the transistors to obtain the current for a proportional temperature measurement in the device of Ishikawa et al.

Regarding claims 4 and 5, Ishikawa et al teach transponder 15 includes a temperature sensor 25, which in one embodiment is a thermistor and in another embodiment is an internal temperature reference. Ishikawa et al further teach, while a thermistor is the preferred temperature sensor, those skilled in the art will recognize that other semiconductor temperature sensing technologies can be incorporated into the transponder.

Regarding claim 12, one of ordinary skill in the art would have found it obvious to monitor temperatures before implantation of the device because one would find monitoring the temperatures before implantation to be an effective way to test the device to ensure it is functioning properly before implanting, to avoid having to remove the device after implantation.

Regarding claim 14-17, one of ordinary skill in the art would have found it obvious to issue an alarm if temperature limits are not met or maintained because

Ishikawa et al teach monitoring station 13 may provide audio or visual alarms whenever a temperature outside of a normal range is detected.

Claims 6-11 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishikawa et al (US 6,254,548) in view of Weijand (US 5,336,244).

Ishikawa et al render obvious the claimed features of a temperature sensor, sampling circuitry, and controller contained within an implantable housing, Ishikawa et al fail to teach or disclose the features of a pulse generator for delivering cardiac shock therapy.

One of ordinary skill in the art would have found it obvious to combine the cardiac shock therapy features of the device disclosed in Weijand with the temperature sensor features of Ishikawa et al to provide the temperature sensor 22 of Weijand in the housing of the pacer because enclosing the temperature sensor 22 of Weijand provides a body temperature measurement that approximates that of the blood temperature of the heart and because sealing the temperature sensor prevents the sensor from corroding from external body fluids.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Manuel whose telephone number is (571) 272-4952.

/George Manuel/  
George Manuel  
Primary Examiner  
Art Unit: 3762